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REMARKS

Applicants appreciate the thorough examination of the present application as evidenced by the Office Action of October 23, 2005. Applicants respectfully submit that the pending claims are patentable over the cited references for at least the reasons discussed herein. Accordingly, Applicants respectfully request reconsideration and allowance of the pending claims.

Oath and Declaration

Applicants filed a substitute declaration on January 11, 20056. Applicants provided a courtesy copy of the substitute declaration to the Examiner by facsimile.

The Section 102 Rejections

Claims 9-11 and 20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,966,060 to Young *et al.* (hereinafter "Young").

Applicants respectfully submit that many of the recitations of Claim 9 are neither disclosed nor suggested by the Young. For example, Claim 9 recites:

> A software distribution system for remote distribution/installation of computer programs from a source data processing system to at least one target data processing system **based on at least two distribution/installation modes**, wherein the computer programs are transferred as packages which are identified in a package list, **the system comprising a queue manager which includes a request queue and an active queue for handling the remote distribution.**

Applicants respectfully submit that at least the highlighted recitations of Claim 9 are neither disclosed nor suggested by the Young for at least the reasons discussed herein.

The cited portion of Young discusses a method and system for remotely installing management software on client machines of a network **without requiring user-intervention such as a logon or client-side action**. *See* Young, Abstract and column 2, lines 21-24. Young further discusses:

> In one enhanced implementation described herein, to avoid some of the security and scalability problems, when the logged on user has sufficient security permissions, **a CCR is not generated by the client machine**. Instead, if a logged-on user has sufficient

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> rights, a client logon process performs the install. **As a result, for such users, the server need not initiate a connection to the client, nor does a security account with administrator privileges need to be set up on the server**. The security and scalability (e.g., bottleneck) problems related to server-initiated installations are thus avoided for users having sufficient security permissions.

See Young, column 2, lines 53-64 (emphasis added). In other words, Young discusses installing software from a remote location using a client configuration request (CCR) or installing the software at the client during, for example, a client logon process, without the use of a CCR. Thus, again Applicants do not dispute that the push-mode (remote) and the pull-mode (by user at client) are known. However, Claim 9 recites a software distribution system for remote distribution/installation of computer programs from a source data processing system to at least one target data processing system **based on at least two distribution/installation modes**. Nothing in the Young discloses or suggests the use of both the push-mode and the pull-mode (or at least 2 distribution/installation modes) in the same software distribution system as recited in Claim 9. Young discusses the use of the push-mode or the pull-mode for software distribution, not both or at least two modes as recited in Claim 9.

Accordingly, Applicants respectfully submit that Claim 9 is patentable over Young for at least the reasons discussed herein. Furthermore, Applicants submit that the dependent claims are patentable at least per the patentability of the independent base claims from which they depend.

Many of the dependent claims are also separately patentable over Young. For example, Claim 10 recites "means for checking if the active queue is overloaded and, if not, for setting the request into the active queue." The cited portion of Young (column 9, lines 61 – column 10, line 31) discusses the client configuration manager (CCM) of Young and the operations thereof. *See* Office Action, page 3. Nothing the cited portion of Young discloses or suggests checking for the overloading of an active queue as recited in Claim 10. Accordingly, Claim 10 is separately patentable over Young for at least these reasons.

The same portions of Young are cited as teaching the recitations of Claims 11 and 20. *See* Office Action, page 3. For similar reasons to those reasons discussed above with respect to Claim 10, Claims 11 and 20 are separately patentable over Young.

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The Section 103 Rejections

A.   Claims 1-8 and 12-19 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Young. Applicants respectfully submit that many of the recitations of these claims are neither disclosed nor suggested by the cited combination. For example, Claim 1 recites:

> A method for remote distribution/installation of computer programs from a source data processing system to at least one target data processing system **based on at least two distribution/installation modes**, comprising:
> **checking if the at least one target data processing system is available**;
> **performing distribution/installation according to one of the at least two distribution/installation modes, if the at least one target data processing system is available**;
> monitoring if the distribution/installation is successful; and
> **switching the distribution/installation mode if the distribution/installation is not successful.**

Claim 8 contains similar recitations to the highlighted recitations and Claims 6 and 7 are a data processing program and a computer program product, respectively, corresponding to the method of Claim 1. Applicants submit that at least the highlighted recitations of Claim 1 are neither disclosed nor suggested by Young for at least the reasons discussed herein.

The Office Action states that Young teaches all the recitations of Claim 1 except for "switching the modes of distribution/installation if the distribution/installation is not successful." *See* Office Action, page 4. As discussed above with respect to Claim 9, nothing in Young discloses or suggests distribution/installation of computer programs from a source data processing system to at least one target data processing system **based on at least two distribution/installation modes**. Again, Young discusses a push-mode or a pull-mode for distributing programs, not a combination of at least two modes as recited in Claim 1.

The Office Action admits that Young fails to teach "switching the modes of distribution/installation if the distribution/installation is not successful." *See* Office Action, page 4. Applicants note that Young has no reason to discuss "switching modes" because Young discusses methods having distinct modes, not methods having at least two modes as recited in

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Claim 1. However, the Office Action states that these recitations are "implicit in the teachings of Young." *See* Office Action, page 5. Applicants respectfully disagree.

The cited portion of Young discusses two different methods of installing software that are not related. *See* Young, column 2, lines 21-64. First, a method of remote installation is discussed, where the installation is retried for a period of time if unsuccessful. *See* Young, column 2, lines 21-64. Second, a method of installation is discussed that is user initiated and does not include a CCR. *See* Young, column 2, lines 53-64. In contrast, Claim 1 recites switching the distribution/installation "mode," not multiple attempts using the same mode. For example, according to some embodiments of the present invention, if the push-mode (first mode) of distribution/installation is not successful, distribution/installation using the pull-mode (second mode) may be attempted (switched from push-mode to pull-mode). Nothing in Young discloses or suggests switching the distribution/installation "mode" as recited in Claim 1. Accordingly, the teachings of Claim 1 are not implicit in the teachings of Young for at least the reasons discussed herein.

As discussed above, Young does not disclose or suggest many of the recitations of Claim 1. Accordingly, Claims 1 and 8 are patentable over the cited references for at least the reasons discussed herein. The dependent claims are patentable at least per the patentability of the independent base claims from which they depend.

Furthermore, there is no motivation to modify Young as suggested in the Office Action. As affirmed by the Court of Appeals for the Federal Circuit in *In re Sang-su Lee*, a factual question of motivation is material to patentability, **and cannot be resolved on subjective belief and unknown authority**. *See In re Sang-su Lee*, 277 F.3d 1338 (Fed. Cir. 2002). It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983).

The Office Action states:

> Thus, if not implicit in the teachings of Young, it would have been obvious to one of ordinary skill in the art to modify the teachings of Young to disclose switching the modes of distribution/installation if the distribution/installation is not successful. This would have advantageously provided alternate means for a user to remotely obtain

distribution/installation programs in case one mode of distribution was unsuccessful, (Young, see abstract).

See Office Action, page 5. This motivation is a motivation based on "subjective belief and unknown authority", the type of motivation that was rejected by the Federal Circuit in *In re Sang-su Lee*. In other words, the Office Action does not point to any specific portion of the cited references that would motivate one of skill in the art to combine the cited references as suggested in the Office Action. If the motivation provided in the Office Action is adequate to sustain the Office's burden of motivation, then anything that "advantageously" provides a desired result would render a combination obvious. This cannot be the case. Accordingly, the statement in the Office Action with respect to motivation does not adequately address the issue of motivation to combine as stated in *In re Sang-su Lee*. Thus, it appears that the Office Action only gains its alleged impetus or suggestion to combine the cited references by hindsight reasoning informed by Applicants' disclosure, which, as noted above, is an inappropriate basis for combining references. Furthermore, even if Young could be properly modified, the modified teachings of Young would not teach the recitations of the claims of the present application for at least the reasons discussed above.

Accordingly, Applicants respectfully submit that independent Claims 1 and 8 are patentable over the cited combination for at least these additional reasons. Furthermore, the dependent claims are patentable at least per the patentability of independent base claims from which they depend.

Many of the dependent claims are separately patentable over Young.

For example, Claim 2 recites:

> The method according to claim 1 wherein the computer programs are transferred as packages which are identified in a package list, the method further comprising:
> pre-specifying attempt numbers for retrying a push-mode distribution and a pull-mode distribution;
> retrieving a next package identified in the package list;
> checking if the at least one target data processing system is available;
> if the at least one target data processing system is available then starting installation of the package on the target data processing system;

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> otherwise, if at least one push-mode attempt is left, resuming and rescheduling a next push-mode distribution and, if no push-mode attempt is left, but at least one pull-mode attempt is left, resuming and rescheduling a next pull-mode distribution.

Claims 16 and 18 recite corresponding data processing programs and computer program products, respectively. Applicants submit that many of the recitations of dependent Claim 2 are neither disclosed nor suggested by Young for at least the reasons discussed herein. In particular, as discussed above, the cited portions of Young fail to disclose or suggest both a push-mode **and** a pull-mode. Thus, it follows that nothing in Young discloses or suggests details related to switching between these two modes as recited in Claim 2 of the present application. In fact, the Office Action admits that Young does not teach such switching recitations. *See* Office Action, page 4. Accordingly, Applicants submit that dependent Claims 2, 16 and 18 are separately patentable over the cited combination for at least these additional reasons.

Dependent Claims 3, 17 and 19 are separately patentable over Young for at least the reasons discussed above with respect to dependent Claim 2.

CONCLUSION

Applicants respectfully submit that pending claims are in condition for allowance, which is respectfully requested in due course. Favorable reconsideration of this application is respectfully requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (919) 854-1400.

Respectfully submitted,

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